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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PALLAVI SHAH, KEITH DEUTSCH, and
GERARD FERNANDO

Appeal 2009-007200
Application 09/551,523
Technology Center 2400

Before ST. JOHN COURTENAY III, CAROLYN D. THOMAS, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 49-54, 56-75, 77-88, and 90-99 which are all the claims pending in the application. Claims 1-48, 55, 76, and 89 were cancelled during prosecution. We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm-In-Part.

Invention

Appellants' invention relates to the field of information networks. More particularly, the invention on appeal is directed to controlling access to information over a network. (Spec. 2).

Representative Claim

49. A method for controlling access to a continuous stream of a content transmitted over a plurality of communication paths, the method comprising:

transmitting from a server a plurality of notifications for determining a sequence of transmission of said continuous stream of said content via a plurality of communication paths;

obtaining by a client said plurality of notifications;

transmitting from said server said continuous stream of said content via said plurality of communication paths according to said sequence of transmission; and

obtaining by said client said continuous stream of said content by automatically switching communication paths in accordance with said sequence of transmission of said content based on said plurality of obtained notifications.

Examiner's Rejection

Claims 49-54, 56-75, 77-88, and 90-99 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Date (US 5,959,677) and Hejna (US 7,100,188 B2).

Claims 49-54, 56, 57, 83-88, 97 and 99

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal regarding claims 49-54, 56, 57, 83-88, 97, and 99:

Under §103, did the Examiner err in determining that the combination of Date and Hejna would have taught or suggested “transmitting from a server a plurality of notifications for determining a sequence of transmission of said continuous stream of said content via a plurality of communication paths,” within the meaning of representative claim 49?

FINDINGS OF FACT

1. Date teaches transmitting a plurality of multiplex signals each containing a plurality of digital data and a plurality of video/audio signals on a plurality of transmission paths. (Col. 3, ll. 19-25).
2. Date teaches transmission rate measuring portions that measure transmission rates in coded signals obtained by encoding the video/audio signals. (Col. 3, ll. 1-5).

Additional findings of fact appear below.

ANALYSIS

Appellants contend that the cited references, notably Date, fail to teach or suggest a plurality of notifications for determining the sequence of transmission, as recited in independent claim 49. (App. Br. 7). We agree for the reasons discussed *infra*.

The Examiner contends that a broad and reasonable interpretation of “sequence of transmission” includes signals, which include “any form of information regarding the type or kind of transmission” based on “frequencies, rates or formats of multiple portions/frames/bits of content being transmitted.” (Ans. 33, ¶2). Based upon our review of the record, we conclude that the Examiner’s claim construction is overly broad and unreasonable. While Appellants do not define “sequence of transmission” in the Specification, we broadly but reasonably construe the plain meaning of the phrase “sequence of transmission” as pertaining to the *order* of transmission. Therefore, claim 49 requires the transmission of a plurality of notifications for determining a particular order (i.e., sequence) of transmissions.

As noted above, we find that Date teaches transmitting a plurality of multiplex signals each containing a plurality of digital data and a plurality of video/audio signals on a plurality of transmission paths, and transmission rate measuring portions that measure transmission rates in coded signals obtained by encoding the video/audio signals. (FF 1-2). However, we agree with Appellants that the relied upon portions of Date do not teach or fairly suggest transmitting notifications for determining a sequence of transmissions within the meaning of claim 49. (App. Br. 7). We note that independent claim 83 recites a similar limitation.

On this record, we do not find, nor has the Examiner established, that Hejna cures the aforementioned deficiencies of Date. Therefore, we reverse the Examiner’s § 103 rejection of independent claims 49 and 83 and associated dependent claims 50-54, 56, 57, 84-88, 97, and 99, respectively.

Claims 58-72 and 90-96

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal regarding claims 58-72 and 90-96:

Under §103, did the Examiner err in determining that the combination of Date and Hejna would have taught or suggested transmitting a notification of a given time in which content will be transmitted on a communication path, within the meaning of claim 58?

FINDINGS OF FACT

3. Date teaches “[t]he transmission rate measuring portions measure transmission rates 531 corresponding to the channels on the basis of the quantities 530 of generated information and gives the transmission rates 531 to the transmission rate evaluation control portion.” (Col. 5, ll. 6-9).

ANALYSIS

Appellants contend that for at least the reasons previously discussed regarding claim 49, the cited references fail to teach or suggest transmitting notifications of communication paths on which parts of the content will be transmitted at given times. (App. Br. 9). We agree.

The Examiner contends that according to Date, “[t]he output signals (notifications) from the plurality of modulation portions 53-1 to 53-N (parts of content) are digitally modulated in different frequency bands” (Ans. 37-38). In addition, the Examiner contends that “[t]he transmission rate

evaluation control portion determines distribution of the plurality of input coded signals 551, 555, 559, and 563 (notifications) to the plurality of multiplexing portions 52-1 to 52-N” (Ans. 38).

However, as discussed above, we conclude that the Examiner’s interpretation of “notifications” (signals) of communications paths on which parts of the content will be transmitted at given time is unreasonably broad. Again, we conclude that claim 58 requires an *indication* (notification) of the communications paths on which parts of the content will be transmitted. As noted above, we find that the cited portions of Date teach or suggest measuring transmission rates (FF 3), but do not teach or fairly suggest a notification of a communication path on which a part of the content will be transmitted *at a given time*. We further note that independent claims 66, 90, and 96 recite similar limitations.

Based on this record, we find that the Examiner erred in rejecting independent claims 58, 66, 90, and 96. Accordingly, we reverse the §103 rejection of claims 58, 66, 90, and 96 as well as associated dependent claims 59-65, 67-72, and 91-95, which stand therewith.

Claims 73-75, 77-82 and 98

Based on Appellants’ arguments in the Appeal Brief, we will decide the appeal of claims 73-75, 77-82, and 98 on the basis of representative claim 73. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal regarding representative claim 73:

Under §103, did the Examiner err in determining that the combination of Date and Hejna would have taught or suggested “transmitting to a subset of a plurality of clients in a secure manner mapping information for a content transmitted over said plurality of communication paths to said plurality of clients,” within the meaning of representative claim 73?

FINDINGS OF FACT

4. Appellants’ Specification does not disclose or define the claimed “mapping information” per se. (Claim 73). Instead, Appellants’ Specification describes “channel mapping.” (Spec. p. 27, l. 4; Fig 5, step 502 “Define Channel Mapping”).

ANALYSIS

Appellants contend that the cited references fail to teach or suggest transmitting mapping information for content. (App. Br. 12) Appellants ground their arguments on those previously presented for claim 49. (*Id.*).

The Examiner reads the claimed “mapping information” on the switch control portion described in Date (col. 6, ll. 20-23; Fig 1) that controls the switch so that the input terminals corresponding to the channels identified by the mode are selected in order at intervals of a predetermined time. (Ans. 39).

On this record, Appellants have not persuasively rebutted the Examiner's findings with respect to claim 73. The Examiner's underlying factual findings and ultimate legal conclusion of obviousness are supported in accordance with a broad but reasonable interpretation of the claimed "mapping information" as encompassing *any* information that performs *any* mapping. We note that the claim term "mapping information" is not defined by Appellants. (FF 4).

Appellants also contend that for the reasons discussed for claim 49, the cited references fail to teach or suggest that content is transmitted over a plurality of communication paths to a plurality of clients. However, Appellants expressly acknowledge that "Date discusses transmitting data across a plurality of transmission paths (e.g., col. 2, lines 46-52; col. 3, lines 19-31" with respect to claim 49. (App. Br. 8, ¶2). Thus, we find the cited references teach or suggest this limitation for the essentially the same reasons articulated by the Examiner, and also in light of the admission by Appellants. (Ans. 16; App. Br. 8, ¶2).

For these reasons, we find Appellants have not shown reversible error¹ in the Examiner's determination that the *combined teachings* of Date and Hejna would have taught or suggested transmitting to a subset of a

¹ See *In re Jung*, Slip op. 2010-1019 at 16, decided March 28, 2011 (CAFC) ("Jung argues that the Board gave improper deference to the examiner's rejection by requiring Jung to "identif[y] a reversible error" by the examiner, which improperly shifted the burden of proving patentability onto Jung. *Decision* at 11. This is a hollow argument, because, as discussed above, the examiner established a prima facie case of anticipation and the burden was properly shifted to Jung to rebut it" . . . "reversible error" means that the applicant must identify to the Board what the examiner did wrong . . . ").

plurality of clients in a secure manner *mapping information* for a content transmitted over said plurality of communication paths to said plurality of clients, within the meaning of representative claim 73. Accordingly, we affirm the §103 rejection of representative claim 73 and associated dependent claims 74, 75, 77-82, and 98 which fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

DECISION

We affirm the § 103 rejection of claims 73-75, 77-82, and 98.

We reverse the § 103 rejection of claims 49-54, 56-72, 83-88, and 90-97 and 99.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

ORDER

AFFIRMED-IN-PART

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